

## Commodity Credit Corporation, USDA

## § 1464.10

retained the status of an eligible producer due to an advance or other preauction arrangement, the producer's marketing card shall not be used to market such tobacco except to reflect a nonauction marketing to the person who paid an advance to the producer or took possession of the tobacco from the producer.

[51 FR 32426, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 57 FR 43584, Sept. 21, 1992; 61 FR 33304, June 27, 1996; 62 FR 3198, Jan. 22, 1997; 66 FR 53509, Oct. 23, 2001; 68 FR 65385, Nov. 20, 2003]

### § 1464.9 Refund of price support advance.

In any case in which a producer has received price support on a lot of tobacco such producer shall refund to CCC any price support advance received with respect to such lot of tobacco if it is determined, after notice and opportunity for an administrative hearing in accordance with part 780 of this title, that such producer:

(a) Received a price support advance on tobacco that was nested, as defined in part 29 of this title or otherwise not eligible for price support. The county committee, with concurrence of a State Committee Representative, may reduce the refund with respect to tobacco otherwise required in this part, in accordance with guidelines issued by the Deputy Administrator.

(b) Filed a false report with respect to the use of pesticides on tobacco produced on the farm from which such lot of tobacco was identified, at the time of marketing, as having been produced.

(c) Misrepresented any fact affecting a tobacco program determination, adopted any scheme or device which tends to defeat the purpose of the tobacco program, or made any fraudulent representation which tends to defeat the purpose of the tobacco program. The refund of CCC price support advance shall apply to all payments on all farms received by such producer.

[51 FR 32427, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 61 FR 33304, June 27, 1996]

### § 1464.10 No net cost tobacco fund or account.

(a) *Definitions.* As used in this part and in all instructions, forms, and doc-

uments in connection therewith, the following terms shall have the meanings herein assigned to them.

(1) *Account* means an account established within the CCC for an association, which account shall be known as the "No Net Cost Tobacco Account."

(2) *Area* when used in connection with an association, means the general geographical area in which farms of the producer-members of such association are located, as determined by the Secretary.

(3) *Association* means a producer-owned cooperative marketing association which has entered into a loan agreement with CCC to make price support available to producers of tobacco.

(4) *CCC* means the Commodity Credit Corporation.

(5) *Fund* means the capital account to be established within each association, which account shall be known as the "No Net Cost Tobacco Fund".

(6) *Net gains* means the amount by which total proceeds obtained from the sale by an association of a crop of quota tobacco pledged to CCC for a price support loan exceeds the principal amount of the price support loan made by CCC to the association on such crop, plus interest and charges.

(7) *Quota tobacco* means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.

(8) *To market* means to dispose of quota tobacco by voluntary or involuntary sale, barter, exchange, gift between living persons, or consigning the tobacco to an association for a price support advance.

(9) *Purchaser* means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, burley or flue-cured tobacco from the producer, or, with respect to the 1986 and subsequent crops of such tobacco, from an association.

(b) *Establishing a No Net Cost Tobacco Fund.* Except as provided in paragraph (c) of this section, each association shall establish and maintain a Fund in accordance with the requirements of section 106A of the Agricultural Act of 1949, as amended.

(c) *Establishing a No Net Cost Tobacco Account.* Upon request of any association, an Account shall be established and maintained for such association in lieu of a Fund. Also, after consultation with an association, the Secretary may establish and maintain an Account for such association in lieu of a Fund if the Secretary determines that the accumulation of the Fund for such association is, and is likely to remain, inadequate to reimburse CCC for net losses which CCC may sustain under its loan agreement with such association. The requirements of section 106B of the Agricultural Act of 1949, as amended, shall be applicable with respect to an Account.

(d) *Producer contributions or assessments.* As a condition of eligibility for price support during the applicable marketing year a producer of quota tobacco shall agree to make contributions to the Fund established for the association serving the area for the kind of tobacco to be marketed by such producer during such marketing year, or, if a Fund has not been established for such association, pay assessments to the Account established for such association. The amount of any contribution or assessment shall be determined in accordance with sections 106A and 106B of the Agricultural Act of 1949, as amended.

(e) *Filing of agreement.* Any agreement to make contributions to a Fund or pay assessments to an Account shall be on a form approved by the Deputy Administrator and shall be filed with the local FSA county committee prior to the issuance of a marketing card for use in identifying tobacco to be marketed from the farm of the kind of tobacco for which such agreement is applicable.

(f) *Responsibility of farm operator.* The farm operator shall determine whether all producers on the farm agree to make contributions to the Fund or pay assessments to the Account, as applicable, that has been established for the association serving the area and may sign on their behalf an agreement which acknowledges that such persons will make such contributions or pay such assessments.

(g) [Reserved]

(h) *Purchaser assessments.* Each purchaser of burley and flue-cured quota tobacco shall pay an assessment with respect to purchases of all such kind of tobacco marketed by a producer from a farm, including purchases from the association of such tobacco from the 1986 and subsequent crops. Such assessment shall be determined in accordance with section 106A or 106B, as applicable, of the Agricultural Act of 1949, as amended, and shall be paid into the applicable association's Fund or Account.

(i) *Collection and remission of contributions or assessments.* (1) Any producer contribution or assessment due under this section shall be collected at the time of marketing:

(i) From any dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer; or

(iii) If the tobacco involved is delivered directly to an association, by such association.

(2) A dealer, receiving station official or warehouse operator may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) Any purchaser assessment due under this section shall be collected at the time of marketing:

(i) From the dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser for such tobacco.

(4) If tobacco involved is marketed at a warehouse auction, the warehouse operator may add an amount equal to the purchaser assessment to the price paid by the purchaser of such tobacco.

(5) All persons who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the

date on which the tobacco was marketed except as provided in paragraphs (i)(5) (i) and (ii).

(i) Warehouse operators who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association in accordance with the provisions of the loan contract between the association and the warehouse operator.

(ii) Dealers who are responsible for collecting any contribution or assessment as required by this section shall remit such collections to the State FSA office in accordance with part 723 of this title.

(6) Any person who fails to collect and timely remit any collections required by this section shall be subject to a late payment charge. Such late payment shall be calculated and assessed in accordance with part 1403 of this title.

(j) *Penalty for failure to collect and remit contributions or assessments.* (1) If any person fails to collect and remit any contributions or assessments according to the provisions of this section such person shall be liable, in addition to any amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. Such a penalty only shall be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessment are collected and remitted not later than 15 days after the date required by this part.

(2) If a warehouse operator fails to collect and remit any contribution or assessment to an association within 15 days after the date provided in the loan contract between the warehouse operator and such association, the association shall provide to the FSA State committee for the state in which the warehouse operator's business is located a statement of the reason for the

failure of the person to timely remit such collection, including the name and address of the warehouse involved, the pounds of tobacco purchased, the date of purchase, and the date the collection was required to be remitted. The association shall submit such facts within 25 days after the applicable due date regardless of whether such assessment or contribution has been remitted to the association.

(3) The FSA State committee shall be responsible for assessing any marketing penalty determined in accordance with paragraph (j)(1) of this section.

(4) The Deputy Administrator or the Deputy Administrator's designee may reduce the amount of any marketing penalty for which a person otherwise would be liable in accordance with the provisions of this section.

(5) The marketing penalty provided in this section is in addition to, and not exclusive of, any other remedies that may be available with respect to collection and remission of any contributions or assessments made in accordance with this section.

[47 FR 51556, Nov. 16, 1982, and 48 FR 21110, May 11, 1983, as amended at 49 FR 24374, June 13, 1984; 51 FR 32427, Sept. 12, 1986; 53 FR 43675, Oct. 28, 1988; 56 FR 21259, May 8, 1991; 57 FR 43584, Sept. 21, 1992; 67 FR 484, Jan. 4, 2002; 68 FR 65385, Nov. 20, 2003]

#### **§ 1464.11 Nonrefundable marketing assessment.**

Effective only for each of the 1991 through 1998 crops of tobacco for which price support is made available according to § 1464.2 of this part, both the producer and purchaser of such tobacco shall each remit to the CCC a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such kind and crop on each pound of tobacco marketed. The nonrefundable marketing assessment will be:

(a) Determined and announced by CCC at the time of announcing the national price support level for applicable kinds of tobacco or as soon thereafter as possible.

(b) Collected and remitted to CCC in accordance with § 1464.10(i) of this part from producers and purchasers at the time of marketing.